IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929

LA.App..No. 1031 of 2003(C)

LAR.95/1998 of SUB COURT, SULTHAN BATHERY
.....

APPELLANT: CLAIMANT

N.T.VIJAYAN, S/O. SANKARAN NAIR,
THIRUNELLI, VIJAYANIVAS, MADAKKIMALA P.O.

BY ADV. SRI.PHILIP MATHEW
SRI.G.G.MANOJ

RESPONDENTS: RESPONDENTS
---

1. STATE OF KERALA, REPRESENTED BY THE
DISTRICT COLLECTOR, WAYANAD, KALPETTA.

2. SPECIAL TAHSILDAR (LA) (ADDL.),
KRP & BSIP, KALPETTA.

BY GOVERNMENT PLEADER

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 20/09/2007 ALONG WITH LAA NO. 1032 OF 2003, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. Nos.1031 & 1032 of 2003

Dated: September 20, 2007

JUDGMENT

Harun-Ul-Rashid, J.

These two land acquisition appeals are filed by the claimants in LAR 95/1998 and 89/1997 respectively on the files of the Sub Court, Sulthan Bathery, against the common judgment and decree dated 27.9.2002.

2. The extent of property acquired in LAR 89/1997 is 0.1330 hectares of wet land in Sy.No.150/5 of Muttil North Village. The acquisition was for the purpose of Karappuzha Irrigation Project. Sec.4(1) notification was last published on 27.6.1994. In the claim statement filed by the appellant/claimant Rs.7500/- per cent was claimed towards the land value besides the claim for other value of improvements and for diminution in value of the unacquired portion of the land.

3. The extent of property acquired in LAR 95/1998 is 0.0730 hectares and 0.0580 hectares comprised in Sy.Nos.136/3 and 136/4 in Muttil North Village. The purpose of the acquisition is the same. The last date of publication of S.4(1) notification is 27.6.1994. In the claim statement filed by the appellant/claimant Rs.10,000/- per cent was claimed towards the land value besides the claim for other value of improvements and for diminution in value of the unacquired portion of the land.

4. The court below jointly tried the above two LARs along with LAR 94/1998. In support of the claim for enhanced land value and for other

improvements, the claimants examined AWs.1 to 4 and marked Exts.A1 and A2. RW.1 was examined on the side of the respondent and Exts.R1 to R9 documents were marked.

5. Though in the claim statement claim for compensation was made on the basis of centage value of the land, the market value of the property acquired in this case was fixed by following capitalisation method on the basis of the evidence, oral and documentary, adduced by the claimants. Since the claimants have entertained a grievance that the quantum of yield assessed by the respondent is incorrect, an advocate commissioner inspected the site and submitted Exts.C1 and C1(a) report and sketch respectively. The court below found that the commissioner had not ascertained the yield from the yielding improvements properly and accurately and that Ext.C1 report does not contain sufficient information to support the conention of the claim in this regard. Therefore, the court below did not accept the contention of the claimants that the quantum of yield ascertained by the respondent is inadequate. The court below further held that the claimants are not entitled to any enhancement in respect of the yielding improvements. The court below had given a nominal increase in price for the several items of trees and non-bearing improvements situated in the acquired property. The court below granted an enhancement of Rs.1760/- towards the value of structures and non-bearing improvements in LAR 89/1997. Since Ext.C1 report does not

contain any reliable data to support the contention of the claimant that the acquisition has bifurcated his property and consequently the value of the remaining property was diminished, the court below held that the claimant is not entitled to any enhanced compensation by way of injurious affection.

6. In LAR 95/1998 the court below granted a little enhancement for the trees and non-bearing improvements situated in the acquired property. The total amount granted towards enhanced compenstion is Rs.2588/- for the trees and Rs.1295/- for the non-bearing improvements. His claim for compensation on account of injurious affection of the rest of the land was declined for the reason stated in LAR 89/1997.

7. The appellants/claimants in both the appeals contended that they are entitled to fixation of market value of the land at the rate of Rs.7500/- and Rs.10,000/- respectively. The appellants/claimants contended before this court that the enhancement of compensation granted by the court below is very nominal and that the said amounts do not reflect the market value of the properties and therefore the appellants/claimants requested this court for granting them an opportunity to substantiate their case by adducing evidence in support of the proof for enhanced claim. The learned counsel for the appellants submitted that the appellants may be given an opportunity to produce comparable sale deeds for fixation of land value on centage basis.

8. In fact, the appellants have chosen to adduce evidene towards

enhancement of land value by following the capitalisation method. That is the reason why the court below had not considered the fixation of market value on centage basis. The appellants/claimants cannot find fault with the method adopted by the court below for fixing the market value since the method adopted by the court below is solely on the basis of the evidence adduced by the appellants/claimants. We find that no worthwhile amount was awarded towards enhancement of compensation by adopting the capitalisation method. Since the claimants failed to substantiate their claim that the quantum of yield ascertained by the respondent is too low, no substantial increase was made towards compensation. In such circumstances, we are of the view that an opportunity shall be given to the appellants/claimants to substantiate their claim for enhanced compensation on centage basis. The appellants are at liberty to adduce further evdience by producing comparable sale deeds and other evidence to substantiate their claim for enhancement of land value on centage basis. The appellants can also adduce evidence in support of their claim for compensation for injurious affection. If supporting documents are produced, the court below shall examine the same and shall pass a revised judgment and decree in accordance with law.

In the result, the judgment and decree under appeal are set aside. The case is remanded to the court below for fresh consideration in accordance with the directions contained in the preceding paragraphs.

Since the appeals are remanded, the appellants are entitled to refund of full amount of court fee.

KURIAN JOSEPH
JUDGE

HARUN-UL-RASHID
JUDGE.

mt/-

KURIAN JOSEPH &
HARUN-UL-RASHID, JJ.

L.A.A. Nos.1031 & 1032 of 2003

JUDGMENT

20.9.2007